



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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December 6, 2004



Edward Gormley, Mayor
City of McMinnville
230 NE Second Street
McMinnville, Oregon 97128

RE: LCDC Partial Approval and Remand of Periodic Review Task 1 and Urban growth Boundary Expansion (Order 001646)

Dear Mayor Gormley:

The Land Conservation and Development Commission has partially approved the City of McMinnville's submittal for periodic review Task 1, regarding Goal 9 compliance for commercial lands, and an urban growth boundary expansion. The portions of the submittal not approved are remanded, as explained in the enclosed order implementing the decision.

Judicial review of this order may be obtained by filing a petition for review within 60 days from the service of this final order, pursuant to ORS 183.482 and 197.650.

We appreciate the efforts of the City of McMinnville in completing the periodic review task. If you have questions regarding this order, please contact Geoff Crook, DLCD Regional Representative, at (503) 373-0050, extension 289.

Yours truly,

Rob Hallyburton
Community Services Division Manager

Enclosure: Order 04-WKTASK-001646

c: Doug Montgomery, Planning Director
Mary Kyle McCurdy, 1000 Friends of Oregon
Leon Laptook, Community Development Law Center
Mark Davis
Larry French, DLCD Periodic Review Specialist
Jim Hinman, DLCD Urban Planning Specialist (email)
Geoff Crook, DLCD Regional Representative (email)
State Periodic Review Assistance Team (email)

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**BEFORE THE
LAND CONSERVATION AND DEVELOPMENT COMMISSION
OF THE STATE OF OREGON**

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| IN THE MATTER OF PERIODIC REVIEW |) | PARTIAL APPROVAL |
| TASK 1 AND THE AMENDMENT OF |) | AND REMAND ORDER |
| THE URBAN GROWTH BOUNDARY |) | 04-WKTASK-001646 |
| FOR THE CITY OF McMinnville |) | |

This matter came before the Land Conservation and Development Commission (Commission) on April 22 and September 10, 2004 as a referral of a completed periodic review work task and an urban growth boundary (UGB) amendment. The City of McMinnville (city) submitted Task 1 "Inventory of Commercial Lands" of its approved work program to the Department of Land Conservation and Development (department) for review pursuant to ORS 197.633 and OAR chapter 660, division 025. The city also submitted the amendment of its UGB to the department for review pursuant to ORS 197.626 and OAR 660-025-0175. The director of the department referred the submittals to the Commission for action and final order. The Commission, having fully considered the written record as described in Appendix A, including the city's Task 1 and UGB amendment submittal, and the oral presentations of the parties, city, and department, now enters the following findings, conclusion, and order:

Findings

1. On August 26, 1994, the department approved the City of McMinnville's periodic review work program. Task 1 is to prepare an "Inventory of Commercial Lands."
2. On October 17, 2003, the department received the city's Periodic Review Task 1 "Inventory of Commercial Lands" submittal and Notice of Adoption of ordinances that amend its UGB.
3. On October 20, 2003, the city provided notice of the ordinance adoptions and work task submittal to interested parties as required by OAR 660-025-0140(1).
4. On and before November 10, 2003, the department received timely objections to the city's submittal from 1000 Friends of Oregon, Friends of Yamhill County, and Larry Rucker (1000 Friends), Mark Davis, and the Community Development Law Center.
5. On February 16, 2004, the department referred the city's submittals to the Commission pursuant to OAR 660-025-0150(1)(c). Subsequently, the director prepared a report to the Commission on the referral (director's report) pursuant to OAR 660-025-0150(5).

6. On March 30, 2004, the department provided a copy of the director's report to the city, the objectors, and persons who requested a copy of the report.
7. On or before April 9, 2004, the department received valid, written exceptions to the director's report from 1000 Friends, Mark Davis, the Community Development Law Center, and the city.
8. On April 20, 2004, the director issued a response to the exceptions pursuant to OAR 660-025-0160(3).
9. On April 22, 2004, the Commission held a public hearing on the referral. The Commission, on its own motion, decided to accept oral argument from the parties.
10. Commissioner Worrix disclosed that, formerly, as a practicing realtor in McMinnville, she had participated in many real estate transactions in the city, but that she currently has no financial interest in any property that is now before the Commission. Also, she stated that she could consider this matter impartially. No other commissioner had anything to disclose at either the April or September Commission meetings.
11. Prior to his confirmation as a commissioner by the State Senate, Commissioner Jenkins attended the April 22, 2004 public hearing, and he participated as a commissioner at the September hearing. All parties were notified of Commissioner Jenkins' participation, and none objected.
12. On April 22, 2004, the Commission voted to accept the following documents as new information, pursuant to OAR 660-025-0160(7). The city and the objectors were each provided a copy of these documents prior to the April 22, 2004 hearing and were afforded an opportunity to review and respond to them at either the April 22 or September 10, 2004 hearings. These documents were:
 - *Understanding Density and Floor Area Ratio*, City of Boulder, Colorado.
 - *Planning & Design for Transit*, Tri-Met.
 - *The Next American Metropolis*, Peter Calthorpe.
13. The Commission heard oral argument from the city and objectors at the April 22, 2004 meeting and continued the hearing to September 10, 2004. Pursuant to ORS 197.633(3)(b)(B) and OAR 660-025-0160(6), the Commission found that this referral raised new or complex issues of fact or law that made it unreasonable for the commission to give adequate consideration to the issues within the 90-day limit provided in ORS 197.633(3)(a) and OAR 660-025-0160(1).

14. At the September 10, 2004 hearing, the Commission approved a motion to accept as new evidence or information an August 6, 2004 letter and attachments from the director, and written summaries and motions from the city, 1000 Friends of Oregon, and Mark Davis.

Discussion

1. The adopted population forecast is supported by an adequate factual base and complies with the statewide planning goals. The future rates of growth are reasonable compared with past rates of growth for the city. The assumption of an increasing city share of Yamhill County's population and a small decline in the total population of the unincorporated portion of the county over the twenty-year planning period is supported by (1) a letter from the county and (2) evidence from Portland State University Center for Population Research that the unincorporated county population has decreased in several recent years. The city adequately coordinated with affected local governments and satisfied the requirements of Goal 2, ORS 195.025 and ORS 195.036.
2. The city's use of a projected 2.54 persons per household, from the year 1990 Census, to forecast future household size complies with the statewide planning goals. The city established an adequate factual base from which it could reasonably conclude that the persons per household will decline from the year 2000 Census number. The city projected the decline based on consideration of information that members of the "baby boom" generation are starting to reach retirement age and becoming "empty nesters." Also, based on the city's housing needs analysis, a greater percentage of multiple family housing was planned. Because multiple family housing has fewer persons per household than single-family housing, the city projects that the persons per household will decline.
3. The city's housing needs analysis does not conflict with the statewide planning goals by not accounting for redevelopment in the "R-2" zoning district. The R-2 zone allows primarily single-family dwellings. If a single-family dwelling in the R-2 zone is demolished, the city anticipates that a new single-family dwelling will be constructed, resulting in no net increase in the number of dwelling units. The city inventoried the undeveloped portions of large single-family lots as "vacant land." Such vacant land presents a redevelopment opportunity. The city did not fail to comply with the statewide planning goals by accounting for such areas as "vacant land" rather than redevelopment. The city planning director testified that additional land had been planned for multiple family developments in the new "R-5" zone, and that future multiple family developments, such as planned unit developments, are not

anticipated in the "R-2" zone. Also, the city has increased the planned density of each needed housing type, and that the reduction in planned density in the "R-2" zone resulted in a planned shift of higher density housing types to other zones, including the new "R-5" zone.

4. The city has established in the record that it has adequately addressed the need for government assisted housing and for farmworker housing as required by ORS 197.296, 197.303, 197.307 and 197.312(2). The city planned for a sufficient number of needed housing types by type of structure at various price ranges and rent levels to meet its identified need. The city established that it has met the need for government assisted housing and for farmworker housing by meeting its identified need for different housing types. The Commission limited its consideration to whether the city had established that its submittal complied with the statewide planning goals in this instance and did not determine whether as a policy matter the inclusion of the need for government assisted housing and for farmworker housing within the need for other housing types (such as multiple family housing) is preferable to distinguishing these housing types by the method of financing rather than the type of structure.
5. The city agreed to a remand of its economic opportunities analysis to address an identified internal inconsistency concerning "floor area ratios" that do not provide an adequate factual base as required by Goal 2.
6. The Commission heard testimony that the city could accommodate a greater portion of its identified need for parks on land within the 100-year floodplain or on facilities shared with the school district or Linfield College, rather than on buildable lands. The Commission remands this issue in order to afford the city the opportunity to accommodate its identified need for parks in a different manner than in this submittal, not because the Commission has determined that the city's submittal does not comply with the statewide planning goals. Because this issue is remanded on that basis, the Commission specifically does not reach the issue of whether the submittal complies with the statewide planning goals.
7. The Commission remands for further consideration the portions of the "Grandhaven," "Norton Lane" and "Three Mile Lane" UGB expansion areas that lie within the 100-year flood plain in light of the Oregon Court of Appeals' recent decision in *Milne v. City of Canby*, 195 Or App 1, 96 P3d 1267 (2004).
8. Inclusion of the following areas in the UGB for urbanization complies with the statewide planning goals: "Riverside South," Fox Ridge Road" and "Redmond Hill." No objections or

exceptions to these areas were submitted. The "Lawson Lane" area has a high priority for urbanization under ORS 197.298 but should not be considered separately from the "Three Mile Lane" area because of locational considerations.

9. The city has demonstrated that the rezoning of several parcels is in compliance with the statewide planning goals. These parcels would not significantly affect a transportation facility under OAR 660-012-0060 because they are small in size or are already developed for a use equivalent to uses allowed in the new zone. These parcels are numbers 7, 9, 10, 15, 16, 19 and 20 in the McMinnville Growth Management and Urbanization Plan, Figure 12 and Appendix F, Attachment 2.
10. The Commission did not hear any argument on the remaining objections and exceptions or the department's recommendations on pages 31 and 32 of the April 20, 2004 staff report "Responses to Exceptions" and made no ultimate decision on these issues.

Conclusion

Based on the foregoing findings and discussion, the director's report, and responses to the objections and exceptions, the Commission partially approves the city's Task 1 and UGB amendment submittal, pursuant to OAR 660-025-0150 and 660-025-0160, as listed in the Order below.

Those portions not explicitly approved shall be remanded for re-submittal by the date specified below.

Order


THEREFORE, IT IS ORDERED THAT:

1. The city's UGB amendment is partially approved for inclusion of the following areas described in the McMinnville Growth Management and Urbanization Plan, Figure 4:
 - a) Riverside South;
 - b) Fox Ridge Road; and
 - c) Redmond Hill.
2. The following rezonings in the McMinnville Growth Management and Urbanization Plan, Figure 12 and Appendix F, Attachment 2 are approved:
 - a) 7 – Tax lot R4429AD07100;
 - b) 9 – Tax lot R4422CC00100;
 - c) 10 – Tax lot R4424C00100;
 - d) 15 – Tax lot R4423 00800;
 - e) 16 – Tax lot R4423 00600;
 - f) 19 – Tax lot R4421BA7700; and
 - g) 20 – Tax lot R4421BA7600.

3. The McMinnville Residential Land Needs Analysis, adopted May 22, 2001, is approved, except for references to the need for parkland on pages 5-31 through 5-33, Table 5-34, Table 6-3, and as referenced elsewhere in that document.
4. Periodic Review Task 1 and all other issues are remanded to allow the city the opportunity to consider, coordinate and make the task consistent. To the extent that the Commission did not specifically address objections received by sustaining or rejecting them, the city has the opportunity to consider those on remand but is not required to make any specific changes. Parties may renew such objections on resubmittal of this work task.
5. The city shall resubmit Task 1 and the UGB amendment within one year of this date, or within one year of the date that the State Court Administrator issues an appellate judgment on judicial review of this order.

DATED THIS 3rd DAY OF DECEMBER 2004.

FOR THE COMMISSION:


Lane Shetterly, Director
Oregon Department of Land
Conservation and Development

NOTE: You may be entitled to judicial review of this order. Judicial review may be obtained by filing a petition for review within 60 days from the service of this final order. Judicial review is pursuant to the provision of ORS 183.482 and 197.650.

Copies of all documents referenced in this order are available for review at the department's office in Salem.

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Appendix A

Record on Review

Pursuant to OAR 660-025-0170(7), the Commission hears referrals on the written record and any new evidence or information the Commission accepts. For this matter, the written record before the Commission is:

Work Task 1 submittal:

- City Ordinance No. 4795.
- McMinnville Economic Opportunities Analysis (November 2001).

UGB Amendment submittal:

- City Ordinance No. 4796;
- Yamhill County Ordinance No. 730;
- McMinnville Growth Management and Urbanization Plan (May 2003);
- McMinnville Growth Management and Urbanization Plan Findings (October 2003);
- McMinnville Growth Management and Urbanization Plan Appendices (May 2003);
- McMinnville Residential Lands Needs Analysis (May 2001).

Objections:

- 1000 Friends of Oregon, Friends of Yamhill County, and Larry Rucker dated November 10, 2003;
- Community Development Law Center (CDLC) dated November 4, 2003;
- Mark Davis dated November 5, 2003.

Department staff report

- Referral of the City of McMinnville's Periodic Review Task 1 and UGB Amendment dated March 30, 2004, including attachments A-M.

Exceptions:

- 1000 Friends of Oregon, Friends of Yamhill County, and Larry Rucker dated April 8, 2004;
- Community Development Law Center (CDLC) dated April 8, 2004;
- Mark Davis dated April 7, 2004;
- City dated April 9, 2004.

Department Response to Exceptions

- Referral of the City of McMinnville's Periodic Review Task 1 and UGB Amendment Response to Exception dated April 20, 2004, including attachments A and B.

New Information accepted by Commission on April 22, 2004:

- *Understanding Density and Floor Area Ratio*, City of Boulder, Colorado; (Attachment G to Department's March 30, 2004 staff report).
- *Planning & Design for Transit*, Tri-Met (March 1993); (Attachment H to Department's March 30, 2004 staff report).
- *The Next American Metropolis*, Peter Calthorpe; (Attachment I to Department's March 30, 2004 staff report).

New Information accepted by Commission on September 10, 2004:

- August 6, 2004 letter from director to parties; and attachments:
 1. A copy of the minutes of Agenda Item 7c of the April 22, 2004 Commission hearing;
 2. Verbatim Transcript of discussion between Commissioner Henri and Mr. Ortiz from the April 23, 2004 LCDC meeting;
 3. 1000 Friends of Oregon letter to Steve Shipsey dated May 12, 2004;
 4. Department decision matrix.
- Written Summaries and Motions authorized by August 6, 2004 letter:
 1. 1000 Friends of Oregon, undated, date stamped September 7, 2004 by DLCD;
 2. Mark Davis dated September 3, 2004;
 3. City dated September 3, 2004.
 4. City letter dated September 3, 2004, objecting to procedure for September 10, 2004 Commission meeting, including response to "1000 Friends Letter of May 12, 2004."
 5. 1000 Friends of Oregon response to city letter, dated September 9, 2004.